

**GOVERNOR'S ADVISORY COUNCIL FOR EXCEPTIONAL CITIZENS (GACEC)
GENERAL MEMBERSHIP MEETING**

7:00P.M., June 18, 2013
George V. Massey Station
Dover, Delaware

MINUTES

MEMBERS PRESENT: Chairperson Terri Hancharick, Dafne Carnright, Carma Carpenter, Janet Cornwell, Helene Diskau, Bill Doolittle, Karen Eller, Lisa Gonzon, Bernie Greenfield, Brian Hartman, Esq., Dave Hosier, Danna Levy, Karen McGloughlin, MaryAnn Mieczkowski, Beth Mineo, Janella Newman, William O'Neill, Robert Overmiller, Jennifer Pulcinella and Ronald Russo.

OTHERS PRESENT: Guests: Annette Fletcher/Educator and Kevin Charles/Delaware Department of Education (DOE) Delaware Interscholastic Athletic Association (DIAA). **Staff present:** Wendy Strauss, Executive Director, Kathie Cherry, Office Manager and Kristin Cosden, Administrative Coordinator.

MEMBERS ABSENT: Nina Bunting, Jean Butler, Al Cavalier, Nancy Cordrey, Cathy Cowin, Jane Donovan, Annalisa Ekbladh, Julie Johnson (leave of absence), Chris McIntyre, Carrie Melchisky, Janet Milnamow, Blake Roberts, JoAnn Rogers, Dennis Rubino, John Ryan, Howard Shiber, Lavinia Smith, Marshall Stevenson, Ray Verlinghieri and Vanessa Withers-Little (leave of absence).

Chairperson Terri Hancharick called the meeting to order at 7:14 p.m. A quorum was present. The June 18, 2013 meeting agenda was approved.

Terri then asked if there was anyone present who would like to address Council during the five minute public comment period. Council member Karen McGloughlin stepped forward to address Council regarding the online Veterans' Services Directory, which was launched on June 18, 2013 by Governor Jack Markell. Karen explained that this interactive website is designed to reach and assist current and retired military personnel and their families. Karen stated that the website is currently in need of more community partners. There are many non-military services and organizations in the community that may be of interest to current and retired military personnel and their families. However, these current and retired military personnel and their families may not be aware of these services through their local veterans' association due to the veterans' association not having knowledge of them. Karen asked that those in the community who would like to reach current and retired military personnel and their families look for ways to partner with their local veterans' associations in order to be listed on the Veterans' Services Directory website. Karen encouraged everyone to take a look at the website. Terri thanked Karen for speaking to Council.

The minutes from the May 21, 2013 meeting were approved, as was the May 2013 financial report.

Terri announced visitors for the evening. Visitors were as follows: Kevin Charles of the Department of Education (DOE) Delaware Interscholastic Athletics Association (DIAA) and Annette Fletcher, educator. Annette stated that this is her first meeting, and that she is interested in becoming a member. Terri thanked Kevin and Annette for attending.

Terri then formally introduced Kevin Charles of the DOE/DIAA, and informed Council that Kevin would be speaking to them about the inclusion of students with disabilities in sports at the district level. Kevin introduced himself and thanked Council for inviting him to speak. Kevin provided Council with copies of a letter of guidance for states from the United States Department of Education Office of Civil Rights (OCR) focusing on students with disabilities in extracurricular sports. The OCR letter of guidance references the United States Government Accountability Office (GAO) report, *Students with Disabilities: More Information and Guidance Could Improve Opportunities in Physical Education and Athletics*. The GAO report "...underscored that access to, and participation in extracurricular athletic opportunities provide important health and social benefits to all students, particularly those with disabilities."

While copies of the letter of guidance were being distributed, Kevin briefed Council on the purpose of the DIAA, which is an agency within DOE. The DIAA's responsibility is to regulate and govern middle school and high school athletics within the State of Delaware. Kevin stated that the DIAA is probably most noted for their 29 state tournaments. These include the championship series tournaments in the fall, winter and spring. Kevin shared that the DIAA funds itself primarily through corporate partnerships and ticket sales.

Kevin informed Council that he is currently serving out the last of his term as President on the National Federation Board of Directors, which is a government federation at the national level. The Federation is located in Indianapolis, Indiana. Kevin also serves on the Sports Medicine Advisory Committee within the Federation.

Kevin stated that the DIAA would like to dispel the common misconception that their primary goal is to prepare students to play college sports. He elaborated by saying that the DIAA encourages all students to participate in extracurricular activities (including non-sports-related activities such as those focusing on the arts). The DIAA feels that the competition field serves as a classroom, and that coaches are teachers. The DIAA also asserts that participation in extracurricular activities enriches the educational experience for students and provides them with life lessons.

Referring to the OCR letter of guidance; Kevin stated that Council may note the letter was actually released on January 25, 2013. The letter of guidance was submitted by the OCR after being made aware of the results of the GAO study, which revealed that students with disabilities are not afforded equal and consistent rights to participate in extracurricular athletic opportunities. The GAO urged the OCR to provide a letter of guidance for states, so that they may begin to rectify this problem. Kevin shared that GACEC Executive Director Wendy Strauss has been in frequent contact with him since January to secure a date to present the information within the OCR letter of guidance

to Council. The June 2013 meeting was the first mutually-agreeable date. Kevin apologized that the information contained within the letter is somewhat dated due to this scheduling delay.

Kevin directed the attention of the Council to the OCR statement of purpose for the letter of guidance, in which the OCR states as, “To ensure that students with disabilities consistently have opportunities to participate in extracurricular athletics equal to those of other students...” The GAO goes on to recommend that the United States Department of Education “...clarify and communicate schools’ responsibilities under Section 504 of the Rehabilitation Act of 1973 (Section 504) regarding the provision of extracurricular athletics.”

Kevin pointed out a statement on page three of the letter of guidance, which states, “...simply because a student is a ‘qualified’ student with a disability does not mean that the student must be allowed to participate in any selective or competitive program offered by a school district; school districts may require a level of skill or ability of a student in order for that student to participate in a selective or competitive program or activity, so long as the selection or competition criteria are not discriminatory.” Kevin said that he agrees with this statement; participation in sports is a privilege, not a right, for *all students*. That being said, Kevin reaffirmed that the law states that students with disabilities cannot be denied participation in extracurricular activities simply because of their disability. Kevin stated that he is surprised that a letter of guidance would be necessary to reaffirm what is clearly stated in the law. However, disregard of the rights of students with disabilities who wish to participate in extracurricular activities, as uncovered by the GAO survey, cannot be ignored.

After participating in a conference call with Acting Assistant Secretary for Civil Rights Seth M. Galanter, Kevin and his colleague came away with five main areas of concern. These five points are all captured within the letter of guidance. Kevin went through the letter of guidance and the main points with Council.

Individual assessment of any potential school athlete is necessary. Kevin stated that districts absolutely cannot deny a student the right to try out based on their disability alone. Sports tryouts are for *all* students, regardless of ability. If reasonable accommodations can be made in order for a student with a disability to try out or participate regularly in team competition, then the district is required to make those accommodations available. Kevin provided Council with the example of a student with a hearing impairment who wishes to participate on the track team. A reasonable accommodation for that student would be to incorporate a strobe light starting device in addition to the traditional starter’s pistol. While the student cannot hear the starter’s pistol, they can see the strobe light and know that the race has begun. This accommodation would not interfere with the nature of the competition, and would allow the student with a hearing impairment to have the same reaction time as their teammates without a hearing impairment.

Kevin said that the key to an accommodation being considered “reasonable” is whether or not that accommodation fundamentally alters the sport. If the proposed accommodation will fundamentally alter the sport, then schools are not required to provide that accommodation. Kevin said that an accommodation also must not provide a hazard to the safety of the athletes. He gave the example of a person using a wheelchair during a football or basketball game. Kevin stated that this situation

would pose a risk to both the student using the wheelchair and the students who were not using wheelchairs. This is due to the possibility that the wheelchair itself may injure another player if the player comes into contact with the wheelchair, or that the person using the wheelchair (or the wheelchair itself) may be injured during play due to the contact nature of these sports.

Kevin explained that school districts must provide needed aids and services to students with disabilities and/or special health care needs that they would normally provide during the day, e.g. administering insulin injections to a student who has diabetes. Kevin provided the example of a student competing in a cross country meet who has diabetes. If the blood sugar levels of the student drop too low or rise too high during the meet, and the student is two miles into the woods on a cross-country course, how is a school nurse to get to the student to administer an insulin injection? This accommodation, as written by many physicians on the Permission to Participate form, most often reads, "Must be accompanied by a school nurse". In order to comply with this order, the school nurse would be required to run the race with the student. In the instance of a cross-country meet, this is not feasible. However, if the school provides the insulin injection accommodation during the school day, then they must provide it after school as well.

A Council member asked Kevin if it would be possible to allow the student to administer their own insulin injections, or to designate a parent or coach to do so. Kevin replied that this would be the proposed solution by the DIAA, but that physicians typically write on the Permission to Participate Form that the student "must be accompanied by a school nurse", which is restrictive and does not allow for training others to administer the injections or for the student to self-administer the injections. Kevin noted that the American Diabetes Association has a program which helps train parents of students who are insulin-dependent to work with the school nurse or another parent or coach to teach them how to administer insulin.

Wendy stated that it is her opinion that student athletes should test their blood sugar levels before they compete and report the levels to the coach. Wendy stated that blood sugar levels can drop quickly, particularly if a person is exerting a lot of effort. ~~Insulin is necessary if the blood sugar level drops too low. Glucagon is necessary if blood sugar levels become too high.~~ [Revision requested 10/4/13 by Council member Al Cavalier: "Insulin is necessary if the blood sugar becomes too high. Glucagon is necessary if blood sugar levels become too low."] Kevin stated that only a school nurse or the student themselves can administer a Glucagon shot in Delaware during school.

Kevin commented that the disability guidelines stated in the OCR letter of guidance require inclusion of students with disabilities where possible in existing school sports programs. This requires that students with disabilities try out for the sport like their typical peers. No one is guaranteed a spot on the team. Everyone must try out. Kevin gave the example of a local public high school soccer team that welcomed a young man with Asperger Syndrome to play on their team after a successful tryout. It was a wonderful experience for the student with Asperger's and for his teammates. This student was nominated for a Spirit in Sport Award at the Federal level.

Kevin stated that there are both adapted and unified scholastic sports teams. Currently, five or six states nationwide have such teams. An adapted sports team would consist of participants who all

use the same accommodation. For example, a basketball team whose members all use wheelchairs. Unified sports teams consist of students with disabilities competing side by side with teammates who do not have disabilities. An example of a unified sports team would be a school track team which includes a student who has a hearing impairment. The accommodation necessary for the student with a hearing impairment (a strobe light start) would not affect the ability of the other members of the team to compete. Kevin said that there may not be enough students in a given school to make up an adapted team for a particular sport. In this instance, a co-op team arrangement is usually made with other local area adapted sports teams.

Kevin closed by reiterating that the goal of the guidelines is to expand opportunities and inclusion for all students in extracurricular sports activities. Kevin said that initially, the DIAA was concerned that schools would provide pushback to the guidelines, similar to what happened when Title IX was begun. Title IX increased participation guidelines for female students. Title IX was not initially embraced by many schools. Indeed, many schools employed tactics to avoid complying with Title IX. This necessitated the involvement of the court system. Kevin does not foresee the difficulties associated with Title IX with the guidelines established by the OCR. Kevin reminded Council that as Acting Assistant Secretary Galanter made clear, there is no right to participate in school sports. It remains a privilege.

Kevin shared that he would like to explore the tactics that the five or six states nationwide utilized to establish their unified and adapted sports teams. He has been working with Special Olympics of Delaware (SODE) on how to implement unified sports teams in Delaware. Kevin told Council that he and SODE recently conducted a trial run with unified sports at the Delaware State Track Meet. At the meet, there were unified sports entries in the 100 meter dash, shot put and the 4x4 relay. While everything did not go completely smoothly in this trial run, Kevin was happy to report that the crowd and athletes gave 100% support. He noted that the unified sports teams were the only teams to receive applause during the meet.

Kevin stated that he will continue to work with SODE to incorporate unified and adapted sports teams into Delaware schools. Once these teams are established, it is his goal to have a Unified Sports State Tournament. SODE has allocated a block of money for hiring a contractual consultant in Delaware. The purpose of this consultant is to help identify strategies and funding sources that will help get unified and adapted sports teams up and running in Delaware schools. Funding is tight for all sports teams in Delaware; however Kevin is confident that Delaware schools will show a commitment to finding ways to incorporate unified and adapted sports teams.

Regulations are another area of concern for Kevin and the DIAA. They want to make sure that there are no impediments to participation in the current Delaware regulations as written. Example: There is an age limit for interscholastic sports participation. This age limit cannot be waived, and is in place for health and safety reasons. However, there are students with disabilities in Delaware who will attend school until age 21. Kevin is concerned about students who cannot participate due to the age limit rule without posing the risk of injury to their teammates and opponents, and who have possibly not had four years of interscholastic sports opportunities.

Kevin stated that last year, the Federation added a goal to expand their involvement in the united and adapted sports area. The Federation would like to assist states to ensure they are knowledgeable about adapted and unified sports and that the Federation is willing and able to help their schools. Kevin provided a link to a website, nfhslearn.com for members. This website offers resources for coaches. There is a free course on the website regarding coaching unified sports. The course is free and open to all interested parties. Kevin advised that this website also provides coaches with information on such topics as exertional heat illness and concussion.

Right after the OCR letter of guidance came out Kevin met with MaryAnn Mieczkowski, Director of Exceptional Children Resources at DOE to discuss the fiscal impact of implementing unified and adapted sports in Delaware schools. Their determination was that as long as school policies are correct, do not practice discrimination against students with disabilities and allow reasonable accommodations for students with disabilities to try out and participate, then the schools must simply continue doing things as they are. Kevin stated that there is always room for improvement. Council members then asked Kevin a number of questions and made statements about their feelings on adapted and unified sports in Delaware. Bill Doolittle stated that GACEC members would be happy to assist the DIAA in going through their regulations to help them red flag any wording which may be discriminatory to students with disabilities. Bill also stated that he feels Delaware is a long way from implementing unified and adapted sports teams. Bill said that as they are worded right now, school forms state that the school “shall provide alternatives” if they cannot provide reasonable accommodations. Bill stated that “shall” is somewhere between “can” and “must”, and that the DIAA must be careful of its wording to avoid lawsuits.

Brian Hartman asked if it would be possible to have a wheelchair division for a track and field team. Kevin replied that it is entirely possible but that the DIAA has not received a request in his nine years with the DIAA to do so. Kevin stated that if a request came in, the DIAA would be open to working to make that request happen. Kevin went on to remind Council that for state tournaments, there are qualifying requirements (e.g. time, distance). Some accommodations may give students with disabilities an advantage over their peers without disabilities (e.g. a student using a motorized wheelchair in a track race). Some sports such as swimming have what is called a “conversion factor”. This conversion factor would be used, for instance, if there was a student who was an amputee on the swim team. It is likely that the time of that student would be slower, but there is a conversion for their time to determine if they qualify. DIAA is not opposed to doing this, but so far there has not been a demand. This lack of demand may be due to students with disabilities not knowing that they can participate.

Brian then asked if students with disabilities could join a team with a “no cut” policy. Kevin replied that as long as the student meets all other eligibility criteria to join the team, then they can participate. Kevin also noted that the DIAA is very open-minded to waiver requests and can work to set aside or modify most regulations, other than the age regulation.

A question was asked about the rationale behind the age regulation, and whether it is based on physical or developmental age. Kevin replied that the age regulation is based on physical age and is in place for health and safety reasons. He reiterated that the age regulation is a nationwide rule that

cannot be waived. However, Kevin said that the State of Ohio has developed a procedure in which a student with a confirmed disability can appeal the age regulation. Kevin stated that the age regulation came into play during a time when schools allowed adults to play on their teams.

Wendy asked Kevin to keep Council apprised of any proposed changes to DIAA regulations. Kevin stated that DIAA regulations go through the state-mandated public comment period process. Terri thanked Kevin for his report.

DOE REPORT

MaryAnn Mieczkowski provided the DOE report, noting that this report encompasses both May and June 2013.

MaryAnn shared that the final submission of the DOE Annual Performance Report (APR) was turned in on May 17, 2013, following comments from the Office of Special Education Programs (OSEP) which requested no major changes.

MaryAnn the reported that on Friday April 19, 57 educators representing twelve school districts and 21 schools attended the second session of “Preventing Bullying by Promoting a Positive School Climate and Self-Discipline” for Positive Behavior Support (PBS) training.

On April 23, 118 educators and 31 students representing 41 schools and twelve districts attended a full day Delaware PBS Conference, “Celebrating Secondary Success”. This event included a showing of the documentary film “Who Cares About Kelsey”. The film focuses on a girl with emotional and behavioral challenges. Conference attendees were pleased to meet both Kelsey and her education coach, who were there in person.

As part of the statewide social skills efforts, MaryAnn reported that the Delaware PBS Project sponsored a two hour session for family members/caregivers during the evening of April 24. The session included support for parents/caregivers on ways to improve social skills by using a social thinking approach.

Delaware sponsored an inter-agency team to participate in the National Community of Practice on Transition State Team Meeting and 7th Annual Transition Capacity-Building Institute. This was held in Charlotte, North Carolina on May 5 through May 9, 2013. The conference was hosted by the National Secondary Transition Technical Assistance Center (NSTTAC), the Individuals with Disabilities Education Act (IDEA) Partnership, the Office of Special Education Programs (OSEP) and National Post-School Outcomes among others. The Delaware team featured representatives from DOE, the Division of Developmental Disabilities Services (DDDS), the Division of Services for Children, Youth and their Families (DSCYF), the University of Delaware Center for Disabilities Studies (CDS) and the Division of Vocational Rehabilitation (DVR). Delaware was also represented by three local transition coordinators as well as two students and a parent. The team used a planning tool that examines post-school outcome data in order to develop an action plan.

On May 22, eight districts participated in the first Delaware Transition Cadre meeting. MaryAnn reports that the Delaware Transition Cadre serves as one of the DOE strategic planning processes for the APR. The cadre focuses on graduation rates, dropout rates and transition planning. DOE encourages districts to participate in the cadre, but participation is not mandatory. DOE is partnering with NSTTAC and the National Post-School Outcomes Center (NPSOC). Both NSTTAC and NPSOC are providing two years of technical assistance to DOE for the Delaware Transition Cadre. The cadre will be analyzing data from districts and will use that data analysis to target how to increase graduation rates, decrease dropout rates and improve post-school outcomes. Terri thanked MaryAnn for her report.

CHAIR REPORT

Terri began her report with information on the progress of the State Transition Task Force for Emerging Adults with Disabilities and Special Health Care Needs. Terri informed Council that the Task Force was in the final editing stages on the final report. The report is due to Governor Markell and the legislature on June 30, 2013. Next to be discussed was the Autism Work Group. GACEC member Annalisa Ekbladh was scheduled to report on the progress of the group and its final report; however Annalisa was unable to attend the June meeting. Terri then asked any other members present who were a part of the Autism Work Group to provide information. Bill Doolittle gave an update, stating that the final report is done and that the group is currently exploring resources to have it printed and distributed. Bill continued by saying the group has its final meetings scheduled for July 2013. MaryAnn added to his comments, saying that Annalisa and a colleague presented at a conference in Washington, DC on the process that the Autism Work Group used to accomplish their goals as a group. Terri thanked Bill and MaryAnn for the update on the Autism Work Group.

Terri requested that Ron Russo provide an update on the Gifted and Talented Task Force. Ron reported that the Gifted and Talented Task Force has mostly completed its business and that a piece of legislation is being entertained by Representative Daryl Scott. Ron stated that the Gifted and Talented Task Force will continue to monitor the progress of this legislation.

Robert Overmiller briefed Council on the Accessible Taxicab Work Group. Robert stated that there is not much to report at this time. Research is still being conducted by the group, and there are indications of progress being made. It is his hope that the group will have more answers this summer and will be able to begin drafting legislation. Wendy shared a story to exemplify how great the need is for readily-available accessible transportation options in Delaware. The story concerned one of her colleagues who uses a motorized wheelchair. The colleague was required to be at work at Legislative Hall; however she found herself unexpectedly without an aide to drive her to work. Delaware Area Regional Transit (DART) Paratransit was unable to help, as they require 24 hours notice to schedule a ride. As a result of this lack of resources, the young woman had to navigate to Legislative Hall using only her motorized wheelchair. The Dover area was experiencing heavy thunderstorms on this particular day, so in addition to the safety concerns associated with traveling in a motorized wheelchair on a major highway, the young woman was placed in further jeopardy by

the weather conditions. She arrived on time for work at Legislative Hall; however she was sopping wet and understandably very unhappy. Fortunately, legislators and the Capitol Police got involved in the situation, and made sure that she received a ride home. Wendy said that she shared this story to emphasize once again the absolute necessity of having readily-available accessible transportation options in Delaware.

Wendy briefed Council on an event entitled “Gateway to the Stars: a Gala to Benefit the Gateway Lab School”. At the Gala, Lieutenant Governor Matt Denn was recognized for his work since 2009 to assure access to quality education for children with special needs. Also honored was GACEC member Marie Anne Aghazadian, Executive Director of the Parent Information Center (PIC) of Delaware. Marie-Anne has been the executive director of PIC since 1989. PIC was recognized for providing outstanding advocacy services for parents of children with disabilities in Delaware. PIC educates parents and caregivers of children with disabilities about a vast array of pertinent topics, such as the Educational Surrogate Parent (ESP) Program. The gala also featured Wolf Dunaway, a young man who has autism and thirteen other disabilities who now works in information technology for the federal government. The Gateway Lab School is a charter school in its second year. The mission of the school is to provide opportunities for students to achieve educational success who are struggling to achieve that success in a traditional school environment. Wendy offered congratulations to Lieutenant Governor Denn and Marie Anne; thanking them for all that they do for their constituents in Delaware. Wendy also recognized Alyssa Cowin, daughter of GACEC member Cathy Cowin. Alyssa was awarded the Goodwill 2012 Goodwill Graduate of the Year Award. Wendy offered her congratulations to Alyssa and her family.

Wendy then provided an update on Senate Bill (SB) 100, the Seclusion and Restraints bill. Within the past week, SB moved quickly over at Legislative Hall. The bill was scheduled to be heard in the House chamber on June 19, 2013. Wendy stated that she is optimistic and hopeful that the bill will pass and will be signed into law so that there will be regulations in place regarding seclusion and restraints in Delaware. Wendy noted that a letter asking for support for SB100 had 41 supporters sign on within a short time frame. The supporters included representatives of agencies, advocates and parents.

COMMITTEE REPORTS

ADULT TRANSITION SERVICES COMMITTEE

Adult Transition Services Committee Chair Cathy Cowin was not able to attend the June meeting. Robert reported in her place. Robert said that the committee discussed the correctional educational system. The correctional education system is planning to add a full time vocational program in Smyrna beginning in September. This plan has been put on hold, however, due to difficulty finding an instructor who meets all the necessary criteria. Robert stated that it is likely that the correctional education system will be implementing a pilot vocational program designed for individuals with cognitive disabilities. Individuals who have Individualized Education Plans (IEPs) are likely to

receive preferential treatment for the four week introductory vocational program. Terri thanked Robert for his report.

CHILDREN AND YOUTH COMMITTEE

Chair Karen Eller reported that the committee discussed the new regulations for teachers of students with Autism. The discussion focused particularly on how, under the new regulations, professional development and certification requirements for teachers of students with Autism must now be completed within 18 months, as opposed to the previously-mandated three years. Karen said that the committee has resolved to examine this issue further next year and that they also plan to discuss it at the GACEC Annual Fall Planning Retreat.

Karen stated that the committee also discussed the seclusion and restraint bill, but that she would not report on it since Wendy already covered it in her report. Karen reported that the Charter School Bill passed. The committee discussed how the Charter School Task Force is scheduled to convene this summer. There needs to be at least one GACEC member to serve on this Task Force. Karen asked Terri and Wendy for guidance on how to appoint a GACEC member to serve on the Task Force. Terri asked Council if there was anyone interested in serving on the Charter School Task Force as a representative of the GACEC and decided that a poll would be sent out to all members via email requesting a volunteer. Terri requested information on when the Charter School Task Force would begin holding their meetings. Bill Doolittle stated that he believes the meetings are scheduled to start during the summer of 2013, since the report is due in January 2014. Bill commented that it is his understanding that the meetings will be held during the day on weekdays. He also advised Council that there are three additional parent positions available on the Charter School Task Force. Terri asked Bill if he would be representing the Delaware Parent Teacher Association (DEPTA) on the Charter School Task Force. Bill replied that he would not, due to a busy schedule and time constraints.

Karen then asked GACEC member Beth Mineo of UD/CDS if she would provide an update on the new Speech Language Pathologist (SLP) program at UD. Beth reported that the UD Faculty Senate approved the curriculum for the program, but gave the condition that the University must raise at least 5 million dollars prior to opening the doors on the SLP Program. Beth said that due to the support of the Delaware Legislature, the University can now begin mobilizing to submit accreditation paperwork by August 1, 2013. Beth shared that the person who has been assigned primary responsibility for this is the Deputy Dean of the College of Health Sciences, Susan Hall. Beth says Deputy Dean Hall is very committed to the SLP Program. Beth and Susan will be traveling to the American Speech-Language Hearing Association (ASHA) in June 2013 to meet with the accreditation professionals and get more information. Beth said that July 2013 was set aside for getting things prepared. Karen concluded her report by saying that the Adapted Physical Education (APE) Committee had no new information to report. Terri thanked Karen for her report.

INFANT/EARLY CHILDHOOD COMMITTEE

Infant and Early Childhood Chair Janet Cornwell reported that the committee did not have a speaker for this meeting. Instead, the committee used their time to review a draft of their annual report, which Janet said is nearly complete. The committee also heard a brief presentation from Disability Education and Awareness Program (DEAP) Project Coordinator Sybil White. Janet said the presentation given by Sybil sparked a rich discussion about the complexity involved in presenting disability awareness information to preschool-aged children.

Janet reported that the committee revisited the topic of discussion from last month, the Delaware Stars Program. Committee members continued to express discomfort that the Delaware Stars Program is structured in such a way that a child care program could receive a five-star rating and not include a single child with a disability. Janet said that the committee would like to work with Wendy to compose a letter to Delaware Stars sharing their concerns and encouraging Delaware Stars to base its operations upon its guiding principle of inclusion. Janet shared that the committee will also be looking closely at the inclusion standards set by the National Association for the Education of Young Children (NAEYC). The committee agreed that the NAEYC is regarded as the most highly-credible source of information regarding the education of young children.

Janet said that the committee also revisited the topic of Purchase of Care (POC). The committee sent a letter last year which raised interest in this issue and also led to a meeting. Janet said that she feels a follow up meeting is necessary since those involved in the first meeting committed to scheduling a second meeting to discuss what is happening with POC. Janet asked Wendy to help in scheduling this meeting. Janet said that she was uncertain if a motion was necessary for these proposed actions. Wendy replied that she would reach out to Deb Gottschalk at the Department of Health and Social Services (DHSS) regarding POC. However, Wendy went on to say that a motion and approval would be necessary to draft a letter to Delaware Stars regarding their inclusion standards. Janet made a motion for the Children and Youth Committee to work with Wendy to draft a letter to Delaware Stars to encourage them to take a stronger stand on inclusion. The motion passed. Terri thanked Janet for her report and stated that Council will send a letter to Delaware Stars.

POLICY AND LAW COMMITTEE

Brian Hartman provided the Policy and Law Committee report in the absence of chair, Jean Butler. Brian reported that the committee agreed to ask GACEC staff to solicit background on House Bill (HB) 125. The committee also agreed to take action on items 3 through 16 in agreement with the comments submitted in the June 8, 2013 legal memorandum.

Motion to accept the commentary as outlined in the legal memorandum submitted by Brian Hartman on the items noted was **approved**.

Commentary on the June regulations and legislation was as follows:

16 DE Reg. 1253 DOE Proposed Administrator Appraisal Process Repeal Regulation

As background, DOE regulations include two (2) sets of appraisal standards covering administrators, Part 108 and Part 108A. The latter (Part 108A) version took effect with the 2011-2012 school year. Indeed, §1.1 of Part 108A recites as follows:

1.1. The Administrator Appraisal Process, Delaware Performance Appraisal System (DPAS II) Revised shall be effective for all school districts and charter schools beginning with the 2011-12 school year, and shall, at such time, replace the current 14 DE Admin Code 108 Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II).

Since the Part 108 standards have been superseded, the DOE is repealing them in their entirety.

Brian and the GACEC Policy and Law Committee recommended endorsement of this “housekeeping” initiative.

16 DE Reg. 1234 DOE Proposed Teacher Appraisal Process Repeal Regulation

As background, DOE regulations include two (2) sets of appraisal standards covering teachers, Part 106 and Part 106A. The latter (Part 106A) version took effect with the 2011-2012 school year. Indeed, §1.0 of Part 106A recites as follows:

1.0. The Teacher Appraisal Process, Delaware Performance Appraisal System (DPAS II) Revised shall be effective for all school districts and charter schools beginning with the 2011-12 school year, and shall, at such time, replace the current 14 DE Admin Code 106 Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II).

Since the Part 106 standards have been superseded, the DOE is repealing them in their entirety. Parenthetically, the DOE is proposing some revisions to the Part 106A standards as analyzed below.

Brian and the GACEC Policy and Law Committee recommended endorsement of this “housekeeping” initiative.

16 DE Reg. 1235 DOE Proposed Teacher Appraisal Process Revision Regulation

The DOE proposed to revise its teacher appraisal standards effective with the 2013-14 school year. Brian and the GACEC Policy and Law Committee discussed the following observations:

A. “Weakening” of Appraisal Process

As background, the Legislature and Governor recently stressed the need to “raise the bar” for the teaching profession in Delaware. Statistically, Delaware student achievement is lagging; resulting in

recognition that the status quo approach to promoting the caliber of Delaware’s teaching profession must be dramatically changed.

The GACEC and SCPD have previously criticized the DOE teacher appraisal process as “overly generous” or “misleading”.

DOE has established five appraisal components in §5.0: 1) planning and preparation; 2) classroom environment; instruction; 4) professional responsibilities; and 5) student improvement. The last component, student improvement, is new. Teachers are rated in these five contexts resulting in an overall classification of highly effective, effective, needs improvement, and ineffective. See §6.0. The classification system could be characterized as “overly generous” or “misleading” in some contexts. For example, a teacher scoring a satisfactory rating in only three of the five components inclusive of student improvement (60%) is characterized as “effective”. Reasonable persons might view such a characterization as a distortion of the plain meaning of “effective”. Likewise, a teacher scoring a satisfactory rating in only one of the five components inclusive of student improvement (20%) is euphemistically characterized as “needs improvement”. Brian and the committee suggested that DOE may wish to revisit the qualifications for “effective” and “needs improvement” to more closely align to the plain meaning of the terms.

The “overly generous” characterization of an “effective” teacher was recently underscored in the DOE dispute with the Christina School District over teacher bonuses paid with “Race to the Top” funds. Christina School District wished to provide bonuses to all teachers with an “effective rating”, a standard so low that more than 99% of its teachers were expected to qualify.

Brian and the committee expressed the opinion that unfortunately, the proposed regulation further dilutes the already “overly generous” teacher appraisal standards. The following are examples:

1. The current regulation (§5.1) contains four (4) appraisal contexts apart from student achievement: 1) planning and preparation; 2) classroom environment; 3) instruction; and 4) professional responsibilities. There are a total of eighteen (18) subparts under these four (4) appraisal contexts. Under the proposed regulation, districts and charter schools are authorized to “waive” one subpart under each of the four (4) appraisal contexts. No permission is needed, i.e., the district or charter school simply notifies DOE of its decision in August. This would result in the option to disregard 22% (4/18) of appraisal components, including the following ostensibly important measures:

5.1.3.3. Communicating Clearly and Accurately: Verbal and written communication is clear and appropriate to students’ ages, backgrounds, and levels of understanding. (Optional)

5.1.1.1. Selecting Instructional Goals: Teacher selects instructional goals that are aligned with the DE content standards and the district or charter school’s curricula. Goals are appropriate for the learners and reflect high expectations for all students, consistent with State Assessment levels of performance where applicable. (Optional)

5.1.1.3. Demonstrating Knowledge of Content and Pedagogy: Teacher shows his or her

knowledge of content and how to teach it to a variety of learners. The teacher's plans include natural connections among content areas that deepen student learning. The content that he or she teaches is aligned to the district or charter school's curricula. (Optional)

Brian and the committee felt that since each district and charter school can waive different components, valid comparisons of data among districts and charter schools would not be possible. Each district and charter school would be using different criteria.

2. The DOE proposes to no longer require improvement plans for teachers with an "unsatisfactory" rating during an observed lesson. Such improvement plans will be optional:

8.1.1. An Improvement Plan ~~shall also~~ may be developed if a teacher's overall performance during an observed lesson is unsatisfactory. This unsatisfactory performance ~~shall~~ may be noted by the ~~evaluator on the Formative Feedback form~~ Evaluator on the required forms by noting "PERFORMANCE IS UNSATISFACTORY" and initialing the statement.

B. Unannounced Observations

Brian and the committee felt that one proposed change in the standards merits endorsement. The revised standards contemplate more "unannounced" versus "announced" observations of teachers. See §§3.1, 3.2, and 3.4. Brian and the committee feel that this should result in enhancing the validity and reliability of assessments.

C. Miscellaneous

The word "evaluator" in §8.4, second sentence, should be capitalized.

Brian and the committee recommended sharing the commentary above with the DOE, Governor, Lt. Governor and select policymakers.

16 DE Reg. 1244 DOE Proposed Specialist Appraisal Process Repeal Regulation

As background, DOE regulations include two (2) sets of appraisal standards covering specialists, Part 107 and Part 107A. The latter (Part 107A) version took effect with the 2011-2012 school year. Indeed, §1.0 of Part 107A recites as follows:

1.0. The Specialist Appraisal Process, Delaware Performance Appraisal System (DPAS II) Revised shall be effective for all school districts and charter schools beginning with the 2011-12 school year and shall, at such time, replace the current 14 DE Admin Code 107 Specialist Appraisal Process, Delaware Performance Appraisal System (DPAS II).

Since the Part 107 standards have been superseded, the DOE is repealing them in their entirety. Parenthetically, the DOE is proposing some revisions to the Part 107A standards this month.

Brian and the GACEC Policy and Law Committee recommended endorsement of this “housekeeping” initiative.

16 DE Reg. 1245 DOE Proposed Specialist Appraisal Process Revision Regulation

The DOE proposes to revise its specialist appraisal standards effective with the 2013-14 school year. Brian and the GACEC Policy and Law Committee discussed the following observations.

A. “Weakening” of Appraisal Process

The GACEC and SCPD have previously criticized the DOE specialist appraisal process as “overly generous” or “misleading”. A letter written by the GACEC on October 19, 2011 shared the following concerns:

Third, DOE establishes five appraisal components in §5.0: 1) planning and preparation; 2) professional practice and delivery of services; 3) professional collaboration and consultation; 4) professional responsibilities; and 5) student improvement. Unlike the teacher appraisal regulation, these five components are included in the current regulation last revised in May of 2010. Specialists are rated in these five contexts resulting in an overall classification of highly effective, effective, needs improvement, and ineffective. See §6.0. The classification system could be characterized as “overly generous” or “misleading” in some contexts. For example, a specialist scoring a satisfactory rating in only three of the five components inclusive of student improvement (60%) is characterized as “effective”. Reasonable persons might view such a characterization as a distortion of the plain meaning of “effective”. Likewise, a specialist scoring a satisfactory rating in only one of the five components inclusive of student improvement (20%) is euphemistically characterized as “needs improvement”. Brian and the committee recommended that DOE revisit the qualifications for “effective” and “needs improvement” to more closely align to the plain meaning of the terms.

Brian and the committee also stated that unfortunately, the proposed regulation would further dilute the already “overly generous” specialist appraisal standards. The following are examples:

1. The current regulation (§5.1) contains four (4) appraisal contexts apart from student achievement: 1) planning and preparation; 2) professional practice and delivery of services; 3) professional collaboration and consultation; and 4) professional responsibilities. There are a total of eighteen (18) subparts under these four (4) appraisal contexts. Under the proposed regulation, districts and charter schools are authorized to “waive” one subpart under each of the four (4) appraisal contexts. No permission would be needed needed, i.e., the district or charter school would simply notify DOE of its decision in August. This would result in the option to disregard 22% (4/18) of appraisal components, including the following ostensibly important measures:

5.1.2.3. Communicating Clearly and Accurately: Verbal and written communication is clear and appropriate to students’ or clients’ ages, backgrounds, needs, or levels of understanding. (Optional)

5.1.1.2. Demonstrating Knowledge of Best Practice and Models of Delivery: Specialist uses practices and models of delivery that are aligned with local and national standards. (Optional)

5.1.4.2. Recording student data in a Record System: Specialist keeps student or client records relevant to their services and shares information with appropriate school personnel. (Optional)

Brian and the committee observed that since each district and charter school can waive different components, valid comparisons of data among districts and charter schools would not be possible. Each district and charter school would be using different criteria.

2. DOE proposes to reduce the number of “observations” of novice specialists. Currently, three (3) observations (2 announced; 1 unannounced) are required. See §3.4. This is reduced to two (2) observations (1 announced; 1 unannounced) in the proposed regulation.

3. The DOE proposes to no longer require improvement plans for specialists with an “unsatisfactory” rating during an observation. Such improvement plans will be optional:

8.1.1. An Improvement Plan ~~shall also~~ may be developed if a specialist’s overall performance during an observation is unsatisfactory. This unsatisfactory performance ~~shall~~ may be noted by the ~~evaluator on the Formative Feedback form~~ Evaluator on the required forms by noting “PERFORMANCE IS UNSATISFACTORY” and initialing the statement.

B. Unannounced Observations

Brian and the committee stated that it is their opinion that one proposed change in the standards merits endorsement. The revised standards contemplate more “unannounced” versus “announced” observations of specialists who have earned a rating of “highly effective” or “effective”. See §§3.1 and 3.4. This should result in enhancing the validity and reliability of assessments for such specialists.

C. Miscellaneous

The word “evaluator” in §8.4, second sentence, should be capitalized.

Brian and the committee recommended sharing these observations with the DOE.

16 DE Reg. 1255 Department of Public Health (DPH) Proposed Communicable and Other Disease Conditions Regulation

Legislation (H.B. No. 403) was enacted in 2012 to expand the role of DPH in disease control and reporting to specifically include long-term care facilities, freestanding surgical centers, dialysis centers, and psychiatric facilities. DPH is now issuing revised regulations to address changes

prompted by the legislation. The regulations are lengthy (17 pages) and prescriptive.

Brian and the committee discussed the following observations:

1. Section 7.6.1 does not conform to the Delaware Administrative Code Style Manual. In the context of definitions, Section 3.1.2 “provides the following guidance: immediately after the defined word or term, insert the word “means”. Definitions compiled in §7.6.1 do not conform to this protocol. For example, the reference to “Department” is as follows: “Department” The Department of Health and Social Services (DHSS).

Inserting “means” would enhance the “readability” of the definitions.

2. In §7.6, definition of “CDC”, the second sentence merits review for grammar. It recites as follows:

The CDC focuses national attention on developing and applying disease prevention and control ~~(especially infectious diseases)~~ recommendations for chronic and infectious diseases, environmental health, occupational safety and health, health promotion, prevention, and education activities designed to improve the health of people in the United States.

3. In §7.6, definition of “Freestanding surgical center”, the second sentence has 103 words with many subparts and inappropriate punctuation. It should be reformatted and reworded. See Delaware Administrative Code Style Manual, §6.2.4. The references to “, or;” merit revision. The reference to “and/or” should be converted to “or”. See Delaware Administrative Code Style Manual, §6.6.1.

4. In §7.6, definition of “Healthcare Facility”, substitute “other facility” for “other facilities”.

5. In §7, 6, definition of “Psychiatric facility”, capitalize “facility” and substitute “persons with mental illness” for “mentally ill persons”. See Title 29 Del.C. §608.

6. There are multiple references to “and/or the Agency for Healthcare Research and Quality (AHRQ), to name a few”. See, e.g. §§7.6.5.2, 7.6.6.2, and 7.6.6.2. Consider substituting “or the AHRQ”. See Delaware Administrative Code Style Manual, §6.6.1.

7. Section 7.6.14 purports, by State regulation, to supersede contrary federal law. DPH ostensibly lacks the authority to supersede federal law by promulgation of a State regulation.

Brian and the committee recommended sharing these observations with the Division.

16 DE Reg. 1257 Division of Family Services (DFS) Proposed Residential Child Care Facility & Day Treatment Programs Regulation

As background, the Governor issued Executive Order No. 36 on January 4, 2012 establishing a schedule for agencies to solicit input from the public on regulations in effect for more than three years. The Division of Family Services (DFS) noted that it received few comments on its

“Delacare” standards covering residential child care facilities and day treatment programs. DFS intends to initiate a comprehensive review of its standards in the fall of 2013. In the meantime, DFS is proposing to adopt a few “housekeeping” revisions to the existing 37-page set of standards which are summarized at 16 DE Reg. 1258.

Brian and the committee discussed the following technical observations:

First, DFS is substituting “regulation” for “requirement” throughout the standards. Brian and the committee determined that the substitutions are generally acceptable. However, in a few contexts, the substitution results in “odd” or incomplete references. See, e.g., reference to “Regulations of 1.0, 2.0, 3.0 and 4.0” (§5.1.1 and §7.1.1); and reference to “Regulations of 1.0, 2.0, and 3.0” (§8.1.1). Brian and the committee suspect the Division intended to refer to “Regulations of Chapters 1.0, 2.0, ...”. Compare §9.1.1, §10.1.1, and §11.1.1.

Second, Brian and the committee felt that DFS may wish to reconsider the substitution of “regulations” for “requirements” in §10.4.2.

Third, §11.11 requires all toys to be confirmed to be “of safe construction, non-toxic, and free of hazards” and checked with a “choker tube” to ensure parts cannot be swallowed by a child under age 3. Section 11.11.2.8 disallows the presence of any toy in a crib or playpen when an infant is asleep. There is no definition of “infant” but the Office of Child Care Licensing (OCCL) regulations for day care centers (Part 101) define an infant as a child under age one. Brian and the committee shared concerns that some infants may be very attached to a particular toy as a comfort item and may not be predisposed to sleep without it. If all toys are checked for hazards, the committee recommends a query as to whether the presence of a single toy in a crib or playpen is a realistic danger. Brian and the committee stated that DFS may wish to reconsider the total ban on any toy in a crib or playpen when an infant is asleep.

Brian and the committee recommended sharing these observations with DFS.

H.B. No. 125 (Reinstatement of Parental Rights)

This legislation was introduced on May 8, 2013. As of June 8, it had been approved by the House Health & Human Development Committee and awaited action by the full House.

Brian and the committee agreed that conceptually, H.B. No. 125 is a relatively simple bill. Current law authorizes the termination of parental rights (“TPR”) based on multiple grounds. Some of the authorized bases for a TPR do not implicate fault. For example, a parent can consent to a TPR and a parent could be determined, due to mental illness, to be simply unable to fulfill parental responsibilities. See Title 13 Del.C. §§1103(a)(1), 1101(9), and 1103(a)(3). H.B. No. 125 would authorize the Family Court to “reinstate” parental rights if the Court determines that reinstatement would be in the child’s best interests (lines 27-28) and seven (7) conditions are met (lines 9-17). These are not “involuntary” actions - the child and parent or parents must consent (lines 14-15).

The Court must find that adoption “is not possible or appropriate” (line 13).

Brian and the committee recommended endorsement of the legislation subject to consideration of the following amendments.

First, line 22 characterizes the action as one brought “against one or both parents”. This is an “odd” approach since the petition cannot be filed without parental consent (line 15). Brian and the committee feel that it would be preferable to amend line 22 as follows: “...~~against one or both parents~~ in the interests of the child”.

Second, the legislation amends a definition in Title 13 Del.C. Ch. 11, including §1101. Section 1101(9) contains pejorative disability-related references:

(9) “Mentally incompetent” shall be interpreted as referring to a parent who is unable to discharge parental responsibilities by reason of mental illness, psychopathology, mental retardation, or mental deficiency.

Section 1103(a)(3) then refers to “the alleged incompetent”.

The Legislature attempted to delete such pejorative references through adoption of H.B. No. 91 and H.B. No. 214 in the 146th General Assembly. The committee noted that these references were overlooked. Since this bill would amend Ch. 11, it provides an opportunity to include a “housekeeping” amendment to remove objectionable language in §1101(9) and §1103(a)(3). Brian and the committee stated that justifying a TPR based on a mental diagnosis or “competency” focuses undue attention on a diagnosis rather than behavior. Fourteen (14) states do not refer to the disability of a parent in their state TPR statutes.

Brian and the committee recommended sharing these observations with policymakers, including the prime sponsors, Rep. Smith and Rep. Heffernan. The GACEC and SCPD may wish to informally share these observations with the sponsors noted for feedback prior to broader dissemination since there is potential for separate legislation to address the justification for a TPR based on mental condition.

H.B. No. 163 (Transitional Foster Care Supports)

This legislation was introduced on May 30, 2013. As of June 8, it had been released from the House Health and Human Development Committee and awaited action by the full House. There is a \$515,000 fiscal note which indicates that the funds are included in the budget prepared by the Joint Finance Committee.

As background, House Joint Resolution (H.J.R.) 18 from the 146th General Assembly resulted in an assessment of problems experienced by youth transitioning from foster care. The final 50-page

report was issued in September, 2012 and is available at <http://udspace.udel.edu/handle/19716/12527>.

As the preamble to H.B. No. 163 recites, individuals transitioning from foster care at age 18 are at high risk. The following statistics are highlighted: 1) 82% of males are arrested by age 21; 2) 22% become homeless; and 3) females remaining in care to age 21 had a 38% reduction in the incidence of pregnancy before age 20.

H.B. No. 18 implements the recommendations in the report. Existing law (lines 46 - 50) already permits the Family Court to extend services to youth in the Division of Services for Children, Youth and their Families (DSCY&F) custody to age 21. The legislation requires DSCY&F to “create and maintain a developmentally appropriate, comprehensive program that fully integrates independent living services from ages 14 to 21 that will assist youth with their successful transition into adulthood (lines 94-96, 160-163). The bill contemplates the provision of enhanced independent living services to promote financial stability, housing supports, medical supports, employment and training, education, and connection to resources.

There is a high prevalence of disability among youth in foster care. Indeed, the preamble (lines 14-15) recites that many youth aging out of the foster care system “reported lifetime prevalence of Post-Traumatic-Stress Disorder (PTSD) similar to that of many U.S. war veterans”. Brian and the committee recommended a strong endorsement for this bill.

H.B. No. 164 (Mental Health Parity)

This legislation was introduced on May 30, 2013. As of June 8, it remained in the House Economic Development/Banking/Insurance/Commerce Committee.

As background, federal mental health parity legislation was first enacted in 1996. Delaware followed up with enactment of its original mental health parity legislation through H.B. No. 156 in 1998. The state law covers insurance coverage for both serious mental illness as well as drug and alcohol dependency. In the meantime, federal legislation was adopted in 2008 to close loopholes in the 1996 federal parity law and expand the scope of protections for group insurance plans covering more than 50 employees. States are permitted to provide more protections than the federal law. The regulations are published at 45 C.F.R. Part 2590 and available at <http://www.gpo.gov/fdsys/pkg/FR-2010-02-02/pdf/2010-2167.pdf>.

H.B. No. 164 would have two effects.

First, it updates the mental health parity law covering large (50+ employee) groups to require compliance with the 2008 federal law (lines 4-5).

Second, it requires such plans to cover a minimum of 30 consecutive calendar days per benefit year at an inpatient medical or residential facility that is approved by the Joint Commission on Accreditation of Healthcare Organizations (lines 11-13). The rationale for this change is highlighted in the synopsis:

Carriers only provide a limited amount of consecutive days in an inpatient facility (many times, 5 consecutive days) before requiring an insured to seek outpatient therapy. Oftentimes, 5 days is not a sufficient amount of time to diagnose and treat serious mental illness or to detoxify from an alcohol or drug addiction.

Brian and the committee recommended a strong endorsement of H.B. No. 164.

H.B. No. 155 (Distracted Driving: Wearable Computer with Head Mounted Display)

This legislation was introduced on May 30, 2013. As of June 8, it remained in the House Public Safety and Homeland Security Committee.

Google has developed a wearable multi-function computer (“Google Glass”) which is worn like glasses with access to the internet. Google Glass is a hands-free device. Some traffic safety proponents are concerned that individuals will be distracted if driving with the device. Background on Google Glass can be found online on Wikipedia.

H.B. No. 155 would ban operation of a motor vehicle on the highway while using an electronic communication device while the motor vehicle is in motion. Similar legislation was introduced in West Virginia in March, 2013 with the enactment of H.B. No. 3057.

Brian and the committee felt that there were both pros and cons to the legislation. Detractors can cite enforcement difficulties in trying to ascertain if the device is actually being operated while driving. They can also argue that the device is “safer” to use than a dashboard mounted GPS device or referring to a Smartphone screen for directions. Proponents can cite to the greater potential for distracted driving as operators drive while directing attention to a video screen only inches from their eyes to watch movies, read email, etc.

Brian and the committee recommended endorsement of the concept of the bill. While some drivers might only use the devices for GPS directions, the committee suspects that the majority would use it for extraneous multi-tasking, including checking emails. In turn, the committee feels that this will lead to more accidents.

S.B. No. 99 (Dependent Children)

This legislation was introduced on May 30, 2013. As of June 7, it remained in the Senate Children, Youth and Families Committee.

The legislation would have the following effects.

First, while current law requires DSCY&F written consent to placement of children with non-relatives, the legislation would only require DSCY&F assessment (lines 10-12 and 40-44). Exceptions are identified, including placements involving licensed child placement agencies (lines 45-70).

Second, current law generally requires the Family Court to obtain a DSCY&F evaluation and report prior to granting custody of a child to a non-relative (lines 18-21). The legislation deletes this requirement (lines 18-21) and merely cross references a statute which requires assessment unless one of multiple exceptions applies. This change is problematic since it may bar the Family Court from exercising any discretion to direct a DSCY&F evaluation if an exception is literally met. For example, if the Court is considering placement of a child with a distant relative (cousin; great uncle) and there is little or no positive or negative information about the relative, the Court could not obtain a DSCY&F assessment since, by operation of law (lines 21 and 54-55), the assessment is exempt. It would be preferable to clarify that the Family Court may exercise judicial discretion to direct a DSCY&F assessment even if facially exempt under Section 351 of Title 31. To remedy this concern, the committee suggests substituting the following for the proposed §1009(b)(3) [lines 18-21]:

(b)(3) Grant custody of a child to any person or agency where satisfactory arrangements can be made but, in the event the child is placed in a home ~~other than the home of a relative~~, of an “adult individual” who fails to meet the definition of relative in §901 of this Title, the Court shall ~~require order an evaluation written assessment and report~~ from the Department of Services for Children Youth and Their Families or its licensed agency if required by Section 351 of Title 31, or, notwithstanding Section 351 of Title 31, in the sound discretion of the Court.

The synopsis recites that the sponsors intend to make it “clear that the Family Court has the final authority to determine whether or not the placement is appropriate”. It is the opinion of the committee that the exercise of this authority by the Court should be “informed”. Furthermore, the committee stated the opinion that if the Court has reservations about a distant relative, it should have some discretion to direct an assessment even if technically exempt under Section 351 of Title 31.

Brian and the committee recommended sharing these observations with policymakers.

S.B. No. 100 (Seclusion & Restraint)

This legislation was introduced on June 4, 2013. It was released from the Senate Education Committee on June 5 and was on the Senate agenda to be considered on June 11.

As background, several reports have been published in recent years underscoring the problematic use of seclusion and restraint in public schools and the lack of reliable data on use.

- GAO, “Seclusion and Restraints: Selected Cases of Death and Abuse at Public and Private Schools and Treatment Centers”, GAO 09-719T (May 19, 2009), available at <http://www.gao.gov/products/GAO-09-719T>.
- Congressional Resource Services, “The Use of Seclusion and Restraint in Public Schools: The Legal Issues” (April 14, 2009), available at http://www.spannj.org/information/CRS_Report_on_Legal_Issues_in_Seclusion_&_Restraints.pdf.
- NDRN, “School Is Not Supposed to Hurt” (March, 2012), available at http://www.ndrn.org/images/Documents/Resources/Publications/Reports/School_is_Not_Supposed_to_Hurt_3_v7.pdf.

In 2012, the U.S. Department of Education (U.S. DOE) Office for Civil Rights (OCR) issued the results of national data on seclusion and restraint covering 72,000 public schools. The results summarized below are alarming:

- “Of all 38, 792 students physically restrained by school staff members, nearly 70% were students with disabilities.”
- “Of students with disabilities who were mechanically restrained, which includes being handcuffed, tied down, strapped to a chair, or held with equipment for that purpose, a disproportionate share, 44%, were African-American.”
- “Of the 111,417 instances of seclusion in the survey, 61.7% were of students with disabilities, compared with 38.3% for other students.”

Highly publicized instances of restraint have occurred in Delaware, resulting in prosecution.

In May, 2012, the U.S. DOE issued a 41-page set of authoritative guidance on the use of seclusion and restraint in public schools. U.S. Dept. Of Education, “Restraint and Seclusion: Resource Document” (May 15, 2012), available at <http://www2.ed.gov/policy/seclusion/restraints-and-seclusion-resources.pdf>.

The document included a set of 15 principles which discourage the use of seclusion and restraint on students with and without disabilities. States are encouraged to adopt policies and procedures which may exceed the principles in the guidance.

Federal legislation has been introduced on multiple occasions to adopt uniform national standards applicable to public schools. The latest version of the “Keeping All Students Safe Act” was introduced in the House in April, 2013. It incorporates many of the concepts outlined in the U.S.

DOE guidance. There has been little progress on the federal legislation. Most legislation has occurred at the state level. The most recent compilation, published in May, 2013, concluded as follows: “19 states have laws providing meaningful protections against restraint and seclusion for all children; 32 for children with disabilities”. Jessica Butler, “How Safe Is the Schoolhouse? - An Analysis of State Seclusion and Restraint Laws and Policies (May 2, 2013), available on www.specialedconnection.com.

S.B. No. 100 embodies the research and deliberations of an interagency committee convened by the GACEC which reviewed best practices and legislation in other states. S.B. No. 100 has been refined through several sequential drafts to ensure the support of key stakeholders (Delaware Department of Education; DSEA; AdvoServ). Apart from the support of these stakeholders, the legislation has been endorsed by the following organizations:

- Developmental Disabilities Council (DDC)
- State Council for Persons with Disabilities (SCPD)
- Governor’s Advisory Council for Exceptional Citizens (GACEC)
- Autism Delaware
- Disabilities Law Program, Community Legal Aid Society, Inc. (DLP CLASI)

If enacted, the legislation would have the following effects:

- 1) chemical restraint would be banned;
- 2) seclusion and mechanical restraint would be disallowed subject to a DOE waiver;
- 3) physical restraint would be restricted to emergency situations and subject to safeguards;
- 4) a uniform data collection system would be created and results compiled in an annual report;
- 5) DOE regulations would be adopted to implement the law; and
- 4) parents would receive notice of each use of physical restraint and any waiver-authorized seclusion and mechanical restraint.

Brian and the committee recommended that Council share the analysis discussed or comparable summary with policymakers and expand the list of endorsing agencies if the above summary is adopted.

SCR No. 20 (Election Law Task Force)

This legislation was introduced on May 15, 2013 and passed the Senate the same day with strong support (20 yes; 0 no; 1 not voting). As of June 8, it awaited action by the House.

The preamble to the bill notes that the Elections Code contains 32 chapters and has been amended many times over the years without a comprehensive review. The resolution would establish a small, 7-member Election Law Task Force” to “comprehensively review, study, and make findings and

recommendations regarding Title 15 Elections” (lines 7-8). A report would be issued by March 30, 2014.

The GACEC and other councils have been active in recent years in addressing various aspects of the voting process, including accessibility of polling sites, absentee ballot procedures and scope of assistance in the voting booth. Brian and the committee feel that the Task Force offers the opportunity for a comprehensive review of many aspects of the voting process and merits endorsement.

Terri thanked Brian for his report.

MEMBERSHIP COMMITTEE

Chair Danna Levy said that the committee did not hold a June meeting, but had hopes to meet during the summer months and at the GACEC Annual Fall Planning Retreat.

PERSONNEL COMMITTEE

Chair Howard Shiber was not present to provide a report.

CHARTER SCHOOL AD HOC COMMITTEE

Bill Doolittle reported that HB 165 was working its way through the Delaware legislature. At last report, the bill was headed for the Senate Education Committee. Bill said it is his opinion that HB 165 will make it through the Senate Education Committee without any additional amendments. As an aside, Bill noted that while HB 165 does not include a lot for children with disabilities, there has been a significant commitment to reviewing Regulation 275 in order to remove discriminatory language.

ADAPTED PHYSICAL EDUCATION (APE) AD HOC COMMITTEE

Al Cavalier was not present to provide a report.

STAFF REPORT

Terri reported that she and Wendy have been working with the Stockley Initiative Task Force, which was convened by DHSS Secretary Rita Landgraf. The Stockley Initiative Task Force will be

exploring ways to change the vision of the Stockley Center. The Task Force has four Work Groups: Recreation, Health, Housing and Education. The Stockley Center sits on 750 acres of beautiful land, 300 of which are protected and which house some protected species. Terri reported that the Stockley Initiative Task Force has held its last meeting. Secretary Landgraf has now begun an interagency collaboration to review the recommendations made by the Task Force.

Dafne Carnright asked Terri to describe some of the proposed changes the Stockley Initiative Task Force recommended. Suggestions included using the Stockley Center as a telemedicine facility, building accessible trails on the grounds, and constructing accessible housing for persons of all economic backgrounds. Wendy shared that the Education Work Group recommendations overlapped with many of the suggestions made by the other Work Groups. Among the recommendations were that Stockley Center residents have access to medical training programs currently in use at the facility and training within the existing child care facility. The possibility of Stockley housing a satellite office for CDS was also mentioned. The Work Groups discussed evaluating the interests and needs of local and regional health care professionals and providing education and training for providers. Wendy and Terri reported that the Stockley Center has medical facilities that could be utilized to help providers have a satellite office in Sussex County. Terri gave the example of how difficult it is for parents in Sussex County to get their children to A.I. DuPont/Nemours Hospital for Children in New Castle County. It would be helpful to get people and services in Sussex County so people do not have to go out of state to see a special needs doctor. Wendy said that the Stockley Initiative Task Force has one remaining job to do even though they have held their last meeting. Via teleconference, the Work Groups will review the areas that their different recommendations intersect. The Work Groups will also discuss how to utilize and enhance the existing programs at the Stockley Center. Terri said there will be a great deal of focus placed on changing the community perception of the Stockley Center.

There were no outside committee updates. Terri noted that responses to a number of letters could be found in the Letters and Responses Binder located on the cart at the back of the room. Anyone who would like a copy of a letter or who has a question about a letter is encouraged to contact GACEC staff.

Prior to adjournment, Wendy reminded Council that the GACEC Fall Planning Retreat would be held on October 4 and 5, 2013, not during the month of September as it was in the past. Due to the close proximity of dates of the September meeting and the October retreat, Wendy asked Council their thoughts on canceling the September meeting. A motion was made to cancel the September 2013 meeting. When polled, Council voted as follows: 3 for holding the September meeting as scheduled, 12 against holding the September meeting as scheduled and 3 members abstained. Motion passed by majority vote.

The meeting was adjourned at **8:23 p.m.**